

AMENDED IN SENATE MARCH 22, 2012

AMENDED IN SENATE MARCH 21, 2012

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1409**

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**Introduced by ~~Committee on Jobs, Economic Development, and the Economy (V. Manuel Pérez (Chair), Beall, Block, Grove, Hueso, and Morrell)~~ Assembly Member V. Manuel Pérez**

March 10, 2011

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An act to amend Sections 11346.2 and 12098.3 of, and to add Section 11346.23 to, the Government Code, relating to regulations.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1409, as amended, ~~Committee on Jobs, Economic Development, and the Economy~~ V. Manuel Pérez. Regulations: small businesses.

(1) Existing law creates the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy to assist the Legislature and the Governor in promoting economy, efficiency, and improved service in the transaction of public business in state government.

This bill would make legislative findings and declarations relating to regulatory policy based upon a study by the commission.

(2) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act requires every state agency subject to the act to submit, with the notice of the proposed adoption, amendment, or repeal of a regulation, an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation, which

is required to include, among other things, a description of any reasonable alternatives that would lessen any adverse impact on small business and the agency's reasons for rejecting those reasonable alternatives.

This bill would clarify the nature of the reasonable alternatives an agency is required to include in its initial statement and would require an agency to include any reasonable alternative submitted by the public or the Office of the Small Business Advocate in the statement. This bill would require the initial statement to include an assessment of whether there are similar or related regulations adopted by another state regulatory entity and require the agency to coordinate with that entity to reduce regulatory burdens, as provided.

(3) Existing law requires various topics to be listed in the State Administrative Manual.

This bill would require the Department of General Services to provide in the State Administrative Manual guidance on procedures that facilitate the review of existing regulations and the implementation of new and modified regulations, as specified.

(4) Existing law creates the Office of Small Business Advocate to represent the views and interests of small businesses before state agencies.

This bill would clarify the nature of this function by requiring the advocate to comment on, and gather input from small businesses on, reasonable alternatives to proposed and existing regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) The Legislature finds and declares all of the  
2     following:  
3     (1) Historically, California's regulatory process has produced  
4     meaningful benefits for Californians in consumer safety, food  
5     security, worker protection, energy efficiency, and air and water  
6     quality. Unfortunately, over time, California's approach to  
7     developing regulations has, according to the Milton Marks "Little  
8     Hoover" Commission on California State Government Organization  
9     and Economy, resulted in an uneven regulatory environment for  
10    businesses that lacks coordination and the kind of thorough  
11    oversight that ensures efficiency and accountability.

1 (2) The commission found, in October 2011, that the process  
2 the state uses to develop regulations varies widely, particularly in  
3 the use of economic analysis to determine what burden a proposed  
4 regulation will have on an affected person or business. Further,  
5 the commission found that the state has been reluctant to adopt  
6 and use analytical tools employed in other states and at the federal  
7 level. The state's current process has produced a regulatory  
8 approach that can focus intensely on solving problems in a single  
9 arena without taking into consideration the broader context or  
10 consequences of the solution.

11 (3) The commission reported that it found, *among other things*,  
12 examples of where regulatory procedural shortcomings resulted  
13 in failed rulemaking efforts, the potential imposition of costly  
14 conditions that could force painful tradeoffs, or regulations  
15 undermined by an economic analysis that did not account for  
16 real-time changes in the economy. The commission further found  
17 that the current system, intended to ensure that regulating agencies  
18 choose the least burdensome alternative, failed to meet that  
19 objective.

20 (4) The commission recommended, among other things, that  
21 the state establish an Office of Economic and Regulatory Analysis  
22 that would reestablish the regulatory analysis function which once  
23 existed in the now-defunct Trade and Commerce Agency. In  
24 reestablishing this function, the state can learn from the example  
25 of the United States Office of Information and Regulatory Affairs,  
26 located in the White House's Office of Management and Budget.  
27 The small cost associated with reestablishing this function would  
28 be more than offset by reducing the costs of failed regulatory  
29 processes, reducing lengthy methodological challenges, and  
30 potentially improving confidence in the rulemaking process.

31 (b) The Legislature further finds and declares that having a  
32 well-functioning economy that encourages innovation and new  
33 business development is highly dependent on an effective and  
34 efficient regulatory environment that addresses key public health,  
35 safety, and environmental conditions. Wasteful government  
36 practices that increase costs and result in project delays can threaten  
37 the state's long-term economic growth.

38 SEC. 2. Section 11346.2 of the Government Code, as amended  
39 by Section 2 of Chapter 496 of the Statutes of 2011, is amended  
40 to read:

1 11346.2. Every agency subject to this chapter shall prepare,  
2 submit to the office with the notice of the proposed action as  
3 described in Section 11346.5, and make available to the public  
4 upon request, all of the following:

5 (a) A copy of the express terms of the proposed regulation.

6 (1) The agency shall draft the regulation in plain, straightforward  
7 language, avoiding technical terms as much as possible, and using  
8 a coherent and easily readable style. The agency shall draft the  
9 regulation in plain English.

10 (2) The agency shall include a notation following the express  
11 terms of each California Code of Regulations section, listing the  
12 specific statutes or other provisions of law authorizing the adoption  
13 of the regulation and listing the specific statutes or other provisions  
14 of law being implemented, interpreted, or made specific by that  
15 section in the California Code of Regulations.

16 (3) The agency shall use underline or italics to indicate additions  
17 to, and strikeout to indicate deletions from, the California Code  
18 of Regulations.

19 (b) An initial statement of reasons for proposing the adoption,  
20 amendment, or repeal of a regulation. This statement of reasons  
21 shall include, but not be limited to, all of the following:

22 (1) A statement of the specific purpose of each adoption,  
23 amendment, or repeal, the problem the agency intends to address,  
24 and the rationale for the determination by the agency that each  
25 adoption, amendment, or repeal is reasonably necessary to carry  
26 out the purpose and address the problem for which it is proposed.  
27 The statement shall enumerate the benefits anticipated from the  
28 regulatory action, including the benefits or goals provided in the  
29 authorizing statute. The benefits may include, to the extent  
30 applicable, nonmonetary benefits such as the protection of public  
31 health and safety, worker safety, or the environment, the prevention  
32 of discrimination, the promotion of fairness or social equity, and  
33 the increase in openness and transparency in business and  
34 government, among other things.

35 (2) For a major regulation proposed on or after January 1, 2013,  
36 the standardized regulatory impact analysis required by Section  
37 11346.3.

38 (3) An identification of each technical, theoretical, and empirical  
39 study, report, or similar document, if any, upon which the agency

1 relies in proposing the adoption, amendment, or repeal of a  
2 regulation.

3 (4) Where the adoption or amendment of a regulation would  
4 mandate the use of specific technologies or equipment, a statement  
5 of the reasons why the agency believes these mandates or  
6 prescriptive standards are required.

7 (5) (A) A description of reasonable alternatives to the regulation  
8 and the agency's reasons for rejecting those alternatives.  
9 Reasonable alternatives to be considered include, but are not  
10 limited to, alternatives that are proposed as less burdensome and  
11 equally effective in achieving the purposes of the regulation in a  
12 manner that ensures full compliance with the authorizing statute  
13 or other law being implemented or made specific by the proposed  
14 regulation. In the case of a regulation that would mandate the use  
15 of specific technologies or equipment or prescribe specific actions  
16 or procedures, the imposition of performance standards shall be  
17 considered as an alternative.

18 (B) A description of reasonable alternatives to the regulation  
19 that would lessen any adverse impact on small business and the  
20 agency's reasons for rejecting those alternatives. Alternatives  
21 include, but are not limited to, phasing of implementation to take  
22 into account the compliance capacity and resources of small  
23 business, performance standards to provide compliance flexibility  
24 for small business, simplification of reporting and compliance  
25 standards, differing requirements for small and large businesses,  
26 and partial or total exemptions based on the firm's actual degree  
27 of activity within the regulated activity.

28 (C) Notwithstanding subparagraph (A) or (B), an agency is not  
29 required to artificially construct alternatives. The agency shall list  
30 any alternative that was submitted to the agency by the public and  
31 the Office of the Small Business Advocate and determined to be  
32 unreasonable.

33 (6) Facts, evidence, documents, testimony, or other evidence  
34 on which the agency relies to support an initial determination that  
35 the action will not have a significant adverse economic impact on  
36 business.

37 (7) A department, board, or commission within the  
38 Environmental Protection Agency, the Natural Resources Agency,  
39 or the Office of the State Fire Marshal shall describe its efforts, in  
40 connection with a proposed rulemaking action, to avoid

unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(8) Each state agency shall assess whether there is a similar or related regulation that has been adopted by another state regulatory entity and determine whether there are opportunities to coordinate and harmonize compliance activities in order to reduce the cost and regulatory burden on firms and individuals.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) This section shall become operative on January 1, 2012.

(e) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 3. Section 11346.2 of the Government Code, as amended by Section 3 of Chapter 496 of the Statutes of 2011, is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

1 (1) The agency shall draft the regulation in plain, straightforward  
2 language, avoiding technical terms as much as possible, and using  
3 a coherent and easily readable style. The agency shall draft the  
4 regulation in plain English.

5 (2) The agency shall include a notation following the express  
6 terms of each California Code of Regulations section, listing the  
7 specific statutes or other provisions of law authorizing the adoption  
8 of the regulation and listing the specific statutes or other provisions  
9 of law being implemented, interpreted, or made specific by that  
10 section in the California Code of Regulations.

11 (3) The agency shall use underline or italics to indicate additions  
12 to, and strikeout to indicate deletions from, the California Code  
13 of Regulations.

14 (b) An initial statement of reasons for proposing the adoption,  
15 amendment, or repeal of a regulation. This statement of reasons  
16 shall include, but not be limited to, all of the following:

17 (1) A statement of the specific purpose of each adoption,  
18 amendment, or repeal, the problem the agency intends to address,  
19 and the rationale for the determination by the agency that each  
20 adoption, amendment, or repeal is reasonably necessary to carry  
21 out the purpose and address the problem for which it is proposed.  
22 The statement shall enumerate the benefits anticipated from the  
23 regulatory action, including the benefits or goals provided in the  
24 authorizing statute. These benefits may include, to the extent  
25 applicable, nonmonetary benefits such as the protection of public  
26 health and safety, worker safety, or the environment, the prevention  
27 of discrimination, the promotion of fairness or social equity, and  
28 the increase in openness and transparency in business and  
29 government, among other things. Where the adoption or  
30 amendment of a regulation would mandate the use of specific  
31 technologies or equipment, a statement of the reasons why the  
32 agency believes these mandates or prescriptive standards are  
33 required.

34 (2) For a major regulation proposed on or after November 1,  
35 2013, the standardized regulatory impact analysis required by  
36 Section 11346.3.

37 (3) An identification of each technical, theoretical, and empirical  
38 study, report, or similar document, if any, upon which the agency  
39 relies in proposing the adoption, amendment, or repeal of a  
40 regulation.

1 (4) (A) A description of reasonable alternatives to the regulation  
2 and the agency's reasons for rejecting those alternatives.  
3 Reasonable alternatives to be considered include, but are not  
4 limited to, alternatives that are proposed as less burdensome and  
5 equally effective in achieving the purposes of the regulation in a  
6 manner that ensures full compliance with the authorizing statute  
7 or other law being implemented or made specific by the proposed  
8 regulation. In the case of a regulation that would mandate the use  
9 of specific technologies or equipment or prescribe specific actions  
10 or procedures, the imposition of performance standards shall be  
11 considered as an alternative.

12 (B) A description of reasonable alternatives to the regulation  
13 that would lessen any adverse impact on small business and the  
14 agency's reasons for rejecting those alternatives. Alternatives  
15 include, but are not limited to, phasing of implementation to take  
16 into account the compliance capacity and resources of small  
17 business, performance standards to provide compliance flexibility  
18 for small business, simplification of reporting and compliance  
19 standards, differing requirements for small and large businesses,  
20 and partial or total exemptions based on the firm's actual degree  
21 of activity within the regulated activity.

22 (C) Notwithstanding subparagraph (A) or (B), an agency is not  
23 required to artificially construct alternatives. The agency shall list  
24 any alternative that was submitted to the agency by the public and  
25 the Office of the Small Business Advocate and determined to be  
26 unreasonable.

27 (5) Facts, evidence, documents, testimony, or other evidence  
28 on which the agency relies to support an initial determination that  
29 the action will not have a significant adverse economic impact on  
30 business.

31 (6) A department, board, or commission within the  
32 Environmental Protection Agency, the Natural Resources Agency,  
33 or the Office of the State Fire Marshal shall describe its efforts, in  
34 connection with a proposed rulemaking action, to avoid  
35 unnecessary duplication or conflicts with federal regulations  
36 contained in the Code of Federal Regulations addressing the same  
37 issues. These agencies may adopt regulations different from federal  
38 regulations contained in the Code of Federal Regulations  
39 addressing the same issues upon a finding of one or more of the  
40 following justifications:



1 (A) The differing state regulations are authorized by law.

2 (B) The cost of differing state regulations is justified by the  
3 benefit to human health, public safety, public welfare, or the  
4 environment.

5 (7) Each state agency shall assess whether there is a similar or  
6 related regulation that has been adopted by another state regulatory  
7 entity and determine whether there are opportunities to coordinate  
8 and harmonize compliance activities in order to reduce the cost  
9 and regulatory burden on firms and individuals.

10 (c) A state agency that adopts or amends a regulation mandated  
11 by federal law or regulations, the provisions of which are identical  
12 to a previously adopted or amended federal regulation, shall be  
13 deemed to have complied with subdivision (b) if a statement to  
14 the effect that a federally mandated regulation or amendment to a  
15 regulation is being proposed, together with a citation to where an  
16 explanation of the provisions of the regulation can be found, is  
17 included in the notice of proposed adoption or amendment prepared  
18 pursuant to Section 11346.5. However, the agency shall comply  
19 fully with this chapter with respect to any provisions in the  
20 regulation that the agency proposes to adopt or amend that are  
21 different from the corresponding provisions of the federal  
22 regulation.

23 (d) This section shall be inoperative from January 1, 2012, until  
24 January 1, 2014.

25 SEC. 4. Section 11346.23 is added to the Government Code,  
26 to read:

27 11346.23. The Department of General Services shall provide  
28 in the State Administrative Manual guidance on procedures that  
29 do both of the following:

30 (a) Facilitate the periodic review of existing significant  
31 regulations to determine whether a regulation has become, or parts  
32 of the regulation have become, outmoded, ineffective, insufficient,  
33 or excessively burdensome, and to modify, streamline, expand, or  
34 repeal them in accordance with what has been learned. The intent  
35 of providing guidance on such retrospective analyses is to ensure  
36 that a regulation has not resulted in unintended consequences that  
37 could create unexpected harm, that a new technology has emerged  
38 making the existing regulation obsolete, or that a fundamental  
39 change in the economy creates an unforeseen regulatory burden.

(b) Facilitate the orderly implementation of new and modified regulations, including, but not limited to, limiting the implementation date of new and modified regulations that require compliance by private firms to two standardized dates, except in circumstances where there is evidence that delaying implementation could result in significant harm to the public.

SEC. 5. Section 12098.3 of the Government Code is amended to read:

12098.3. (a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees who are needed to accomplish the purposes of this article.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations that affect small businesses, and advocacy on state policy and programs related to small businesses on disaster preparedness and recovery including providing technical assistance.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business, including, but not limited to, commenting on and gathering input from small businesses, and making suggestions on reasonable alternatives to proposed and existing regulations.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government that are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest.

1 (5) Seek the assistance and cooperation of all state agencies and  
2 departments providing services to, or affecting, small business,  
3 including the small business liaison designated pursuant to Section  
4 14846, to ensure coordination of state efforts.

5 (6) Receive and respond to complaints from small businesses  
6 concerning the actions of state agencies and the operative effects  
7 of state laws and regulations adversely affecting those businesses.

8 (7) Counsel small businesses on how to resolve questions and  
9 problems concerning the relationship of small business to state  
10 government.

11 (8) Maintain, publicize, and distribute an annual list of persons  
12 serving as small business ombudsmen throughout state government.

13 (9) Consult with the Department of Transportation in the  
14 development and administration of the Small and Emerging  
15 Contractor Technical Assistance Program established pursuant to  
16 Article 2.6 (commencing with Section 14137) of Chapter 2 of Part  
17 5.

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